

AO 242 (12/11) Petition for a Writ of Habeas Corpus Under 28 U.S.C. § 2241

UNITED STATES DISTRICT COURT

Southern District of New York

Regina Lewis

Petitioner

v.

Judy R. Upton

Respondent

(name of warden or authorized person having custody of petitioner)

Case No.

(Supplied by Clerk of Court)

PETITION FOR A WRIT OF HABEAS CORPUS UNDER 28 U.S.C. § 2241

Personal Information

1. (a) Your full name: Regina Lewis
(b) Other names you have used:
2. Place of confinement: Federal Prison
(a) Name of institution: FMC Carswell
(b) Address: PO Box 27137 Fort Worth, TX 76127
(c) Your identification number: 67206-054
3. Are you currently being held on orders by:
☒ Federal authorities ☐ State authorities ☒ Other - explain: Judge Hellenstein
4. Are you currently:
☒ pretrial detainee (waiting for trial on criminal charges)
☐ Serving a sentence (incarceration, parole, probation, etc.) after having been convicted of a crime
 If you are currently serving a sentence, provide:
 (a) Name and location of court that sentenced you:
 (b) Docket number of criminal case: 12cr.655
 (c) Date of sentencing:
☐ Being held on an immigration charge
☒ Other (explain): unlawfully imprisoned and experiencing cruel and unusual punishment.

Decision or Action You Are Challenging

5. What are you challenging in this petition:
- ☐ How your sentence is being carried out, calculated, or credited by prison or parole authorities (for example, revocation or calculation of good time credits)
 - ☒ Pretrial detention
 - ☐ Immigration detention
 - ☐ Detainer
 - ☐ The validity of your conviction or sentence as imposed (for example, sentence beyond the statutory maximum or improperly calculated under the sentencing guidelines)
 - ☒ Disciplinary proceedings
 - ☒ Other (explain): prosecution continued after the case 12 MAG 1992 was closed on 8-23-12. order for competency issued on 1-6-14
6. Provide more information about the decision or action you are challenging:
- (a) Name and location of the agency or court: U.S. District Court for the S.D.N.Y. 500 Pearl St. NY NY 10007
- (b) Docket number, case number, or opinion number: 12 MAG 1992 - 12 Cr. 655
- (c) Decision or action you are challenging (for disciplinary proceedings, specify the penalties imposed): indictment 12 Cr. 655 and Segregation ~~Settled~~ Confinement in federal prison, order for competency 18 USC 4241(d)
- (d) Date of the decision or action: 1-6-14 order under 18 USC 4241(d)
~~10-10-12 return to custody after an order for my release~~
~~2-25-14 sent to prison order for competency~~

Your Earlier Challenges of the Decision or Action

7. First appeal
- Did you appeal the decision, file a grievance, or seek an administrative remedy?
- ☒ Yes ☐ No
- (a) If "Yes," provide:
- (1) Name of the authority, agency, or court: U.S. District Court 500 Pearl St. NY NY 10007
 - (2) Date of filing: mailed 3-19-14 notice of appeal
 - (3) Docket number, case number, or opinion number:
 - (4) Result: no response yet. ~~response from facility administrators~~
 - (5) Date of result:
 - (6) Issues raised: ~~Same as here~~. I filed over 50 cop-outs to the Facility Warden and Charles Samuels Jr but no one responded at the facility, and FBOP simply returned my BP form and letter complaint unanswered on 2-26-14 and Court denies every motion and ignores all others.

(b) If you answered "No," explain why you did not file a third appeal:

10. **Motion under 28 U.S.C. § 2255**

In this petition, are you challenging the validity of your conviction or sentence as imposed?

☐ Yes

☒ No

If "Yes," answer the following:

(a) Have you already filed a motion under 28 U.S.C. § 2255 that challenged this conviction or sentence?

☐ Yes

☒ No

If "Yes," provide:

(1) Name of court:

(2) Case number:

(3) Date of filing:

(4) Result:

(5) Date of result:

(6) Issues raised:

(b) Have you ever filed a motion in a United States Court of Appeals under 28 U.S.C. § 2244(b)(3)(A), seeking permission to file a second or successive Section 2255 motion to challenge this conviction or sentence?

☐ Yes

☒ No

If "Yes," provide:

(1) Name of court:

(2) Case number:

(3) Date of filing:

(4) Result:

(5) Date of result:

(6) Issues raised:

AO 242 (12/11) Petition for a Writ of Habeas Corpus Under 28 U.S.C. § 2241

(4) Result:

(5) Date of result:

(6) Issues raised:

12. Other appeals

Other than the appeals you listed above, have you filed any other petition, application, or motion about the issues raised in this petition?

☒ Yes☐ No

If "Yes," provide:

(a) Kind of petition, motion, or application: Habeas Corpus

(b) Name of the authority, agency, or court:

U.S. District Court 225 Cadman Plaza E. Brooklyn NY 11201

(c) Date of filing: 11-18-13

(d) Docket number, case number, or opinion number: 13 CV 879 (ARR)

(e) Result: Still waiting

(f) Date of result:

(g) Issues raised: unlawful disciplinary actions, imprisonment and conditions of my imprisonment

Grounds for Your Challenge in This Petition

13. State every ground (reason) that supports your claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground.

GROUND ONE:

See attachment A-B

Ground one:

On August 20, 2012, I was informed of my release since I was to go home by Counselor Hill for the MCC.

On August 14, 2012, an order was entered under seal for Case 12MAG1992 for my release from Federal Custody.

On August 23, 2012, Case 12MAG1992 was closed without being issued a docket number. Both orders were filed by the clerk in accordance with the F.R.C.P. Rule 55.

Supporting facts: On October 10, 2012, a Sentry release transaction was prepared by the Metropolitan Detention Center's (MDC) day and the Record Office Legal Technicians in accordance with the Innate Systems Management Manual Section 309 Chapter 3 Sentry Functions Authorized by the USDO-FBOP Program Statement. The U.S. Marshals were provided with proper release paperwork. The Verification Central Inmate Monitoring Clearance form, the CIM In-Transit Data form clearly indicated my destination, and I was released to the Watchtower Co. Hospital per order 12MAG1992 4241(b) for medical treatment not to exceed 30 days. The Metropolitan Correctional Center submitted the order when it was transferred to the Metropolitan Detention Center. On October 10, 2012, I was released to the U.S. Marshals who violated the order when they held me and released me to the Orange County Sheriff's providing them with the CIM In-Transit Data form and clearance information. Since there were no notifications and no detainers the Orange County Sheriff's Department had no legal authority to take me into custody nor hold me or return me to the U.S. Marshals custody.

Ground two: The U.S. Marshals were not detained legally by an order or return (in information to return me to the Metropolitan Detention Center. The MDC Brooklyn indicated the August 14, 2012 order when they accepted me back from the County Jail. During the Bureau's Senate Systems Management Manual, they specifically state that a transfer receipt (BP 583) is to be prepared for each inmate in custody. In transfer form of custody is to be signed by the Bureau personnel.

(b) Supporting facts: Martin's legal Magistrate judge F.R.C.P. Rule 54 provides 14 days for a party to file an objection. Since the prosecutor did not file an objection to the August 14, 2012 order the failure to oblige with the rule amounts to a waiver of the issue.

Ground three: I was indicted in prison and I have been assisted with ineffective counsel beyond a reasonable doubt.

(c) Supporting facts: Martin (Loken) did not immediately inform me of the order nor did he do nothing to dismiss the indictment Dec. 6/55 thereafter.

attachment B:

Grounds

Richard Rose may become aware of the order and did not file a motion in dissent, although his question to the judge regarding the legality of the Constitutionality was not addressed by the Court. Lloyd Epstein stand-by agreement was not authorized to ^(and) represent me went on to see the document and to instruct the Court and the prosecutor that it is his firm opinion that I am incompetent because of the Com. to Transit Data form Release Authorization (BP-5342) that I base my entire opinion on. I am not a lawyer but I am a judge. Mr. Epstein mislead the Court in his youth, the

Court accepted my statement being and accepted me as incompetent. I have been in confinement in Federal Prison where I am housed in segregation Administrative detention. I have been denied, I am denied unrestricted access to the Court, Law Library, legal research materials, visitors, recreation, Case Management Team, Call, phone, medical attention. I have been placed in Administrative Detention according to the psychologist by Unit Team Manager Mr. Hunt. The psychologist has expressed her desire to have me on the unit so that our interactions would be more benign. This form of housing interrupts her ability to expiate and to perform her examination in prison and this confinement interrupts my ability to engage in legal activities.

The Civil In-France Data form and Clearance information has been Authenticated by L.P. Lissal who wrote an incident report after he became aware of the Civil In-France Data form Release Authorization (BP-592) provided to me upon my return to custody on October 11, 2013.

Ground Four: The Court is prejudiced & Supplanting facts: Mr. Epstein also filed a motion with my permission for Judge Williams to review my motion under Fed.R.C.P. 11(b) which was denied by the judge in November 2012. I am Pro Se and I did not file motion under Fed.R.Crim.P. Rule 12.2(c), because it would be impracticable since I'm questioning the legality of the indictment, and the statute requirement has not been met.

Moreover, it would be "impracticable" to require notice of intent to assert a psychiatric defense on the basis of the prosecution's evidence before the prosecution has presented that evidence. *People v. Gonzalez* 2014 BY 39486, NY, NO12 2/13/14.

GROUND FOUR:

7A See Attachment A-B

(a) Supporting facts (Be brief. Do not cite cases or law.):

(b) Did you present Ground Four in all appeals that were available to you?

☒ Yes

☐ No

14. If there are any grounds that you did not present in all appeals that were available to you, explain why you did not:

Request for Relief

15. State exactly what you want the court to do:

An acquittal and release from Custody
injunctive relief from administrative detention
with privileges and rights restored ~~solitary confinement~~

Declaration Under Penalty Of Perjury

If you are incarcerated, on what date did you place this petition in the prison mail system:

I declare under penalty of perjury that I am the petitioner, I have read this petition or had it read to me, and the information in this petition is true and correct. I understand that a false statement of a material fact may serve as the basis for prosecution for perjury.

Date: 3-30-14



Signature of Petitioner

Signature of Attorney or other authorized person, if any

Memorandum in Support of Habeas Corpus Petition

§ 115. Influencing, impeding, or retaliating against a federal official by threatening or injuring a family member with intent to impede, intimidate or interfere with such official, or law enforcement officer while engaged in the performance of official duties or with intent to retaliate against such official judge or law enforcement officer on account of the performance of official duties shall be punished as provided in subsection (b).

(2) (i) Whoever—

(A) issues a threat, or murders, or attempts or conspires to whip or murder or threaten to assault or kidnap or murder a member of the immediate family of a United States judge, a United States judge, a federal law enforcement officer, or an official whose killing would be a crime under section 1114 of this title [18 USC 1114] or

(3) threatens to assault, kidnap, or murder a United States official, a United States judge, a federal law enforcement officer, or an official whose killing would be a crime under section 1114,

(b) (i) The punishment for an assault in violation of this section is—

- (A) unless under this title and
- (B) if the assault consists of simple assault & term of imprisonment for not more than one year;
- (ii) if the assault involved physical contact with the victim, of that assault or the intent to commit another felony in term of imprisonment for not more than 10 years;
- (iii) if the assault resulted in serious bodily injury as a term defined in section 1365 of this title [18USCS 1365] and including any conduct that if the conduct occurred in the special maritime and territorial jurisdiction of the United States, would violate section 2241 or 2242 of this title [18USCS 2241 or 2242] or a dangerous weapon was used during, and in relation of the offense a term of imprisonment for not more than 30 years.

The statute is intended to protect the immediate family member of a federal official and not the federal official themselves under 115 punishable under 114 such sentence. The government's disclosure set a fixed sentencing guideline of 10-16 months that was not part of a plea or final sentence, when I declined to accept the sentence. On December of 2012 a trial was set for 1-15-13 and reset for 1-20-13, trial was cancelled and I was sent to federal prison for a psych study from June 2013 - August 2013. On November 27, 2013 I was released on pre-trial supervision ROR because I had made out of the 16 months

in pre-trial detention. According to the judge I could serve no more time even if I were to be found guilty at trial nor be placed on probation. Trial was set for December 3, 2013 and reset for December 6, 2013. I was released on December 19, 2013 for awaiting my Supreme release authorization. I was returned to custody and transferred to the FMC Carson Federal Prison for another psych study on 2-25-14. The indictment is insufficient because the statute requires it has not been met by the acts alleged.

No case goes so far as to validate that it is taking the fundamentals of a criminal, pleading and it has never been argued that a bill of indictment can make valid an indictment that is otherwise bad (Quinn-Spratt v. United States 207, 2d 36:1927 U.S. App Lexis 2460 W. 4833 June 10, 1927) Baykin et al v. United States 114, 2d 484:1926 U.S. App Lexis 2512 W. 4699 February 19, 1926. I was also denied effective counsel because no attorney informed me that the 16-16 months sentencing guideline had been changed and that I was facing without accepting time served in December 2012. (Miller v. Faye 132 S. Ct 1399 (2012); Lopez v. Gopar 132 S. Ct 1376 (2012) 41-132 S. Ct. at 1388; Lick v. Faye 132 S. Ct. at 1407; Lopez 132 S. Ct. at 1384; Lick v. Faye 132 S. Ct. at 1407-08; Padilla W. 132)

Kentucky 130 S.Ct. 1473 (2010) ~~Hill~~ Jackhart, 474 U.S.
52, citing McMann, 397 U.S. at 771. Strickland,
4166 U.S. at 686 & 688.

The offense here did not to be charged is made up
of intent and intent. Where to include is general
it is not sufficient merely to follow its language
in an indictment, but the indictment must
allege the specific offense bearing under the
general description of the offense in order that
the accused may enjoy the right secured by the
Sixth Amendment "to be informed of the
nature and cause of the accusation" against
him. *United States v. Cruikshank*, 92 U.S. 542, 23 L. Ed.
588; *United States v. Hoss*, 88 Ct. 571, 124 U.S. 483, 31 L. Ed.
516; *Foster v. United States*, 253 F. 481, 165 C.C.A. 193;
Miller v. United States (C.C.A.) 288 F. 917.

In December 2012 the prosecutor said he had 3
witnesses and needed only half an hour to convict
me. His time has come and gone while bias and
prejudice are all that is left because the case
albeit illegal took so long to go to trial. For example:
see order and opinion denying motions to dismiss
indictment and for release from detention 12Cv.655
(AKH) 3-20-14. I am not in detention I am in
Federal prison in administrative detention that is not
considered a punishment but a punishment.